

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

DAVID MUSKRAT,

Case No. 3:19-cv-01112-CL

Plaintiff,

ORDER

v.

JOSIAS SALAZAR, Warden,
FCI Sheridan,

Defendant.

AIKEN, District Judge.

Plaintiff, an inmate at the Federal Correctional Institution in Sheridan, Oregon (FCI Sheridan), filed this civil rights action and alleged that federal prison officials were deliberately indifferent to his medical needs in violation of his rights under the Eighth Amendment. Plaintiff sought injunctive relief and an order requiring defendant to schedule an appointment with an orthopedic specialist for a second opinion. Compl. at 6.

Defendant moved for summary judgment, arguing that plaintiff failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act. 42 U.S.C § 1997e(a)

(“No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”). Plaintiff did not respond to defendant’s motion.

This Court provided plaintiff with notice of the requirements of summary judgment under Rule 56 and ordered plaintiff to show cause why defendant’s motion should not be granted. Plaintiff has not responded to defendant’s motion or to the Court’s order.

Based on defendant’s motion and the supporting documents, which plaintiff did not dispute, plaintiff did not exhaust his administrative remedies before filing suit. *See Lum Decl.* Accordingly, this action must be dismissed, without prejudice. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (“If undisputed evidence viewed in the light most favorable to the prisoner shows a failure to exhaust, a defendant is entitled to summary judgment under Rule 56.”). Plaintiff may refile this action once he has exhausted his administrative remedies with FCI Sheridan and the Bureau of Prisons.

CONCLUSION

Defendant’s Motion for Summary Judgment (ECF No. 15) is GRANTED, and this action is DISMISSED without prejudice.

IT IS SO ORDERED.

DATED this 26th day of February, 2021.

/s/Ann Aiken
Ann Aiken
United States District Judge